

presented in both cases dealt solely with civil RICO claims. See Petition for a Writ of Certiorari, at i, *Canada*, 537 U.S. 1000 (2002), 2002 WL 32134733; Petition for a Writ of Certiorari, at i, *Honduras*, 540 U.S. 1109 (2004), 2003 WL 22697567. Contrary to Respondents' contentions (Opp. 1, 2, 15, 22), the denial of *certiorari* in these two cases "imports no expression of opinion upon the merits of the case[s]." *United States v. Carver*, 260 U.S. 482, 490 (1923).

Respondents Misrepresent the Views of the U.S. Solicitor General

Respondents assert that the U.S. Solicitor General stated, in the *amicus brief* in *Canada*, that equitable claims are barred by the revenue rule. Opp. 21. In fact, however, the U.S. Solicitor General expressly declined to state a position on this issue:

[B]ecause petitioner does not press any argument that is specific to his claims for law enforcement costs and *equitable relief*, the question whether those claims can be distinguished, for purposes of the revenue rule, from petitioner's claim for lost revenue, is *not presented here*.

Brief for the United States as Amicus Curiae, at 15 n.1, *Canada*, 537 U.S. 1000 (2002) (emphasis added). In *Canada*, the U.S. Solicitor General addressed the only question before this Court, namely "[w]hether the 'revenue rule' precludes a foreign sovereign from bringing a civil RICO claim where the foreign sovereign's alleged injury is lost tax revenue and associated law enforcement costs." *Id.* at i. Accordingly, the pre-*Pasquantino* submissions noted by Respondents do not address Petitioners' equitable claims.

III. THE REVENUE RULE IS A DISCRETIONARY DOCTRINE

The Second Circuit squarely decided that the revenue rule is not an abstention doctrine, contrary to Respondents' suggestions. Opp. 23-24. The district court held that the revenue rule, as defined by the Second Circuit, was "not a manifestation of standard abstention doctrine, nor an invitation to exercise discretion." App. 51a-52a & n.1. On appeal, Petitioners contended that the revenue rule "is a discretionary doctrine" that allows a court to "'abstain.'" App. 42a. The Second Circuit rejected this contention, holding that when the revenue rule is triggered, "the court *may not* hear those claims absent evidence that the rule has been abrogated." App. 43a (emphasis added).

The Second Circuit's decision is fundamentally at odds with the *en banc* decision of the Fourth Circuit, holding that the revenue rule is "permissive." See *United States v. Pasquantino*, 336 F.3d 321, 329 (4th Cir. 2003) (*en banc*), *aff'd*, 544 U.S. __ (2005). The holding below also conflicts with this Court's decision in *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 272 (1935), and the Restatement (Third) of Foreign Relations Law § 483 (1987) – authorities which go unmentioned in the Opposition Brief. This Court should resolve these conflicts, which concern a matter of substantial and recurring importance to the administration of justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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